IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3681 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M/S.HARISH SILK INDUSTRIES A PARTNERSHIP FIRMS

Versus

SURAT MUNICIPALITY(MAHA NAGARPALIKA)

Appearance:

1. Special Civil Application No. 3681 of 1982

MR SB VAKIL for Petitioners

MR PRASHANT G DESAI for Respondent No. 1

MR ARUN H MEHTA for Respondent No. 2

MR MANISH DAGLI, AGP for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/05/2002

ORAL JUDGEMENT

The consent terms dated 9.5.2002 signed on behalf of petitioner - M/s Harish Silk Industries and by respondent No. 2-Bhagwandas Bukhandas Zariwala and also signed by Mr SB Vakil, learned counsel for the

petitioners are taken on record. The same consent terms were earlier signed by Mr SB Vakil, learned counsel for the petitioners and Mr Arun H Mehta, learned counsel for respondent No. 2 on 8.5.2002 and were presented before the Court.

The consent terms are taken on record.

2. In view of the aforesaid consent terms, the petition is taken up for final disposal.

3. In this petition under Article 226 of the Constitution, the petitioners have challenged two notices dated 8-4-1982 (Annexure F) and 7/19-6-1982 (Annexure G) issued by the Town Planner, Surat Municipal Corporation under Section 68 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act") read with Rule 33 of the Gujarat Town Planning and Urban Development Rules, 1979 (hereinafter referred to as "the Rules) calling upon the petitioners to hand over possession of the property being land bearing Survey No. 40/P, Original Plot No. 96-B in view of Surat Town Planning Scheme No. 6, Katotra. The property in question is a small strip of land admeasuring 10 ft. x 80 ft. on which there is also construction of a part of the factory belonging to the petitioners.

The petitioners are running the factory on a part of the land which the petitioners purchased from Bai Kunta, widow of Nandkishore Radhakishan. The land in question was originally bearing Survey No. 40/P/32. In the draft Town Planning Scheme that parcel of land was given Original Plot No. 96-B admeasuring 1217 sq.mtrs. That was also subsequently given Final Plot No. 195 admeasuring 1016 sq.mtrs. The reduction in the area was attributable to a strip of land admeasuring 10 ft. x 80 ft. being included in the adjoining plot belonging to respondent No.2, which was earlier given Original Plot No. 96/A/2 and subsequently given Final Plot No. 187 allotted to respondent No. 2 herein. On account of the aforesaid strip of land admeasuring 10 ft. x 80 ft. having been included in Final Plot No. 187 allotted to respondent No. 2, a peculiar situation arose in as much as the petitioners who had already put up their factory on the land bearing Original Plot No. 96-B would have been required to surrender the aforesaid strip of land admeasuring 10 ft. x 80 ft. alongwith the construction thereon to respondent No. 2 who would not find the same to be of any use, and at the same time the petitioners would find their factory dismembered on account of the aforesaid strip of land with the construction being

included in the land allotted to respondent No. 2 as a part of Final Plot No. 187. Hence, the present petition came to be filed for challenging the aforesaid notices issued by the Town Planner.

4. In response to Rule issued by this Court, affidavits have been filed by the parties. It is, however, now not necessary to refer to all those pleadings for the simple reason that at the hearing of this petition, the petitioners and respondent No. 2 have arrived at the consent terms in the following terms:-

"1. The respondent No.2 has agreed to sell to the petitioners land admeasuring 10' X 80 (i.e. area mentioned in eviction notice) for Rs.1,50,000/- (Rupees One Lac Fifty Thousand) only being the subject matter of the notices dated 08-04-1982 and 19-06-1982 issued by the Town Planner of the respondent No.1 Municipality, which under reconstitution of the plots under the Town Planning Scheme, Surat No.6, Majura-katotra (Preliminary) has been included in Final Plot No.187 allotted to the respondent No.2. The petitioners have deposited the sale consideration with a third party intermediary.

2. The respondent No. 2 agrees that he shall on receipt of consideration from the third party intermediary on behalf of the petitioners execute in favour of the petitioners a registered sale deed in respect of the said land.

3. The respondent No. 2 agrees that he does not claim possession of the said land from the petitioners and has no objection to the impugned notices dated 08-04-1982 and 19-06-1982 being quashed or not enforced by the Municipal Corporation.

4. The petitioners and the respondent No. 2 agree that this Honourable Court be pleased to issue suitable directions to effectuate these terms and the sale deed that may be executed by the respondent No. 2 in favour of the petitioners in respect of the said land."

5. Having heard Mr SB Vakil, learned counsel for the petitioners, Mr Arun H Mehta, learned counsel for respondent No. 2, Mr Prashant Desai, learned counsel for respondent No.1-Surat Municipal Corporation and Mr Manish Dagli, learned AGP for the State of Gujarat, it appears

to the Court that when the owner of Final Plot No. 187 has agreed to sell the aforesaid strip of land admeasuring 10 ft. x 80 ft. (with the factory thereon which is on the boundary line between Final Plot Nos. 187 and 199) to the petitioners - owners of Final Plot No.199, there is no reason why the Town Planner or any other authority of the Surat Municipal Corporation or the State Government would enforce the impugned notices dated 8.4.1982 and 19.6.1982. The Court's attention is not invited to any statutory provision which would bar any such transfer, more particularly when the land in question is on the boundary between two final plots and the transferor and the transferee are owners of adjoining plots of land. Respondent No. 2, has by mutual consent agreed to transfer by way of sale the said strip of land and the construction thereon to the owner of the adjoining plot i.e. to the petitioners.

6. The Court cannot help observing that in view of the peculiar facts and circumstances of the case and aforesaid development, the Surat Municipal Corporation and the State Government can now consider exercise of the powers under Section 70 of the Act which empowers them to rectify an error, irregularity or informality in the Scheme which does not involve substantial variation of the Scheme.

7. In view of the aforesaid developments, it is not necessary for the Court to examine the legal contentions raised in the petition or in the reply affidavits. The interests of justice will be served if this petition is disposed of in the following terms :-

(i) In view of the consent terms dated 9.5.2002 under which respondent No. 2-Bhagwandas Bukhandas Zariwala has agreed to sell to the petitioners the land admeasuring 10 ft. x 80 ft. (the area mentioned in the impugned notices) out of Final Plot No.187 in Town Planning Scheme Surat No.6, Majura-Katotra, on the boundary between Final Plot Nos. 187 and 199 for Rs.1,50,000/-, the Surat Municipal Corporation, its Town Planner and its other officers, the State Government and its officers are permanently restrained from implementing the impugned notices dated 8.4.1982 and 19.6.1982.

(ii) Whenever the owner of Final Plot No. 199 i.e. the petitioners or their successors applies to the Surat Municipal Corporation or to any other authority for building permission or development

permission, the authorities shall consider such application/s in accordance with law, but while doing so the authorities shall always treat the aforesaid land admeasuring 10 ft. x 80 ft. as belonging to the owner of Final Plot No. 199 and shall not raise any objection on the ground that the possession of the said strip of land was not handed over by the petitioners to respondent No.2.

(iii) After the petitioners present the registered sale deed as stated in para 1 of the consent terms, the respondents shall consider exercising power under section 70 of the Gujarat Town Planning & Urban Development Act, 1976 within three months from the date of production of the registered sale deed as aforesaid.

8. The petition is accordingly allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-